

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTERIO WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

June 4, 1999

No. 216441

Jackson Circuit Court

LC No. 98 88918 FH

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, aggravated stalking, MCL 750.411i; MSA 28.643(9), and being a third-felony offender, MCL 769.11; MSA 28.1083. In a pre-trial motion, plaintiff moved to introduce evidence that defendant had previously assaulted the complainant. The trial court denied plaintiff's motion to introduce the evidence of defendant's other "bad act" pursuant to MRE 404(b). Plaintiff filed an application for leave to appeal to this Court, which application was denied. The Supreme Court remanded the case to this Court for consideration as on leave granted, and we affirm.

Defendant allegedly severely beat the complainant, a former girlfriend, by hitting her in the face numerous times with his fist, splitting her jaw. The complainant required hospitalization and corrective surgery. According to testimony at the preliminary examination, defendant had physically assaulted the complainant on approximately four other occasions. On one of those occasions, in 1996, defendant pushed the complainant, causing her to hit her head on the wood portion of a couch. She suffered a left frontal hematoma, which required her to be transported to the University of Michigan hospital for a craniotomy. Plaintiff sought to introduce the evidence of this prior assault. The trial court denied the admission of the evidence.

The admissibility of other "bad-acts" evidence is within the trial court's discretion. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995). We review a trial court's decision to admit or deny evidence for a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion exists if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *People v*

Ullah, 216 Mich App 669, 673; 550 NW2d 568 (1996). We decline to accept the invitation of both plaintiff and amicus curiae to review the trial court's decision de novo. We do so because it is well settled that a trial court's refusal to admit evidence under MRE 404(b) is reviewed for an abuse of discretion. *Crawford, supra*; *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). We do acknowledge that the trial court failed to set forth with any specificity its reasons for declining to admit the evidence. We do not agree, however, that this indicates that the trial court ignored the law or failed to review the appropriate considerations. The trial court was not required to articulate the reasons for its discretionary ruling with regard to the evidence, see *Johnson v Corbet*, 423 Mich 304, 328, n 14; 377 NW2d 713 (1985)¹ and *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993), and from our review of the record, it is obvious that the trial court was fully aware of all of the issues and the arguments of the parties. It was presented with the parties' briefs and heard and participated in the arguments. Therefore, we need only review the trial court decision to determine if it was an abuse of discretion to fail to allow admittance of the evidence.

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporal hurt to another; coupled with (2) an intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325, amended 453 Mich 1204 (1996). It is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The prosecution therefore needs to prove beyond a reasonable doubt that defendant specifically intended to do great bodily harm less than murder to the complainant. An intent to harm can be inferred from defendant's conduct itself. *Id.*

In this case, in addition to relying on the nature of defendant's conduct to prove intent, the prosecution sought additional proof of intent. Specifically, it wanted to introduce evidence of the previous assault in order to prove that defendant intended serious bodily harm to the complainant during the assault at issue. MRE 404(b) provides:

(1) *Evidence of other crimes, wrongs, or acts* is not admissible to prove the character of a person in order to show action in conformity therewith. It *may*, however, *be admissible for other purposes, such as proof* of motive, opportunity, *intent*, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case. [Emphasis added.]

In *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994), the Court clarified the standard for the admission of evidence of other crimes or wrongs. The evidence must be relevant to an issue other than propensity under MRE 404(b); must be relevant under MRE 402; and must not be more prejudicial than probative under MRE 403. *Id.* at 74-75. In addition, the trial court, upon request, may provide a limiting instruction. *Id.* at 75.

Under this formulation, the prosecution bears the initial burden of establishing relevance of the evidence to prove a fact within one of the exceptions to the general exclusionary rule of MRE 404(b). Where the only relevance is to character or the defendant's

propensity to commit the crime, the evidence must be excluded. Where, however, the evidence also tends to prove some fact other than character, admissibility depends upon whether its probative value outweighs its prejudicial effect, taking into account the efficacy of a limiting instruction in cushioning the prejudicial effect of the evidence. [*Crawford, supra* at 385.]

Under the first prong of the *VanderVliet* standard, the evidence must be offered for a proper purpose. Here, the prosecutor offered the evidence primarily for the purpose of proving defendant's intent.² Intent is clearly a proper purpose under MRE 404(b). However, other acts evidence is not admissible simply because a proper enumerated purpose is articulated under MRE 404(b). *Crawford, supra* at 387. Under the second prong of the *VanderVliet* standard, the court must also determine that the evidence is relevant.

MRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 402 provides that "all relevant evidence is admissible." Here, the prosecutor had to prove defendant's intent to cause great bodily harm to the complainant. The prosecutor anticipated that defendant would assert the defense that he did not intend serious injury to the victim. The evidence at issue is relevant. It is related to an element that must be proved by the prosecution and is probative of that issue. *Id.* at 388-389. The evidence demonstrates that defendant more probably than not meant to cause serious bodily harm to the complainant. Defendant hit the complainant about the face numerous times during the assault at issue, knowing that he was capable of causing serious harm to her because he had previously done so and knew about her prior condition. The prosecution did not wish to use the evidence only to demonstrate propensity. In other words, it would not be used to show that because defendant previously assaulted the complainant, he must have done so in this instance in conformity with his character and propensity. We note that there is simply no dispute that defendant committed an assault on the complainant. Rather, the dispute is over what injuries the defendant intended or did not intend to inflict.

Under the third prong of *VanderVliet*, the trial court must determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making a decision of this kind under MRE 403. *VanderVliet, supra* at 75. The trial court apparently concluded that the evidence was more prejudicial than probative. The trial court stated, "[t]his area is a very dangerous situation for the Defendant and the People to get reversed on. I don't think its necessary for this particular case." In this case, the evidence was obviously prejudicial. Moreover, we note that there is a special danger of unfair prejudice when a juror learns that a defendant has previously committed the same bad act, here an assault on the complainant, as that for which he is on trial. See *Crawford, supra* at 398. The risk is severe that the juror will use the evidence for an improper purpose, such as to convict on the basis that defendant is a bad person or convicted criminal. *Id.* In addition to a high risk of prejudice in this case, there were other available means of proving intent. Specifically, the intent to cause serious bodily harm can be inferred from the defendant's conduct of repeatedly striking the victim in the face. *Parcha, supra*. Moreover, we also note that given that defendant is additionally charged with aggravated stalking, the

jury will be aware of the prior relationship of the parties and the fact that defendant violated a personal protection order to get to the complainant. The jury can infer an intent to seriously harm the complainant from that evidence. Therefore, although we may have decided the issue differently, we are mindful that we are reviewing for an abuse of discretion. We cannot find that the trial court abused its discretion in not allowing the evidence. We cannot determine that there was no justification or excuse for the trial court's ruling where the evidence is arguably more prejudicial than probative, and is arguably inadmissible under MRE 404(b).

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael J. Kelly

/s/ Harold Hood

¹ In *Johnson, supra*, the Court stated:

While this Court is reluctant to impose upon the trial courts a boiler-plate requirement to state reasons for discretionary rulings, it is manifest that appellate deference to the exercise of trial court discretion is made unnecessarily difficult, and often impossible, when trial courts fail to articulate the reasons for a discretionary ruling

² Plaintiff also claimed the evidence was relevant to the absence of mistake in his actions.